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(b) The tax is computed by applying to the wages paid in a calendar year, with respect to employment after December 31, 1938, the rate in effect at the time the wages are paid.

[T.D. 6658, 28 FR 6632, June 27, 1963]

§ 31.3301-4 When wages are paid.

Wages are paid when actually or constructively paid. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be credited to or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn upon at any time, and their payment brought within his own control and disposition. See § 31.6011(a)-3, relating to the return on which wages are to be reported.

§ 31.3302(a)-1 Credit against tax for contributions paid.

(a) *In general.* Subject to the provision of paragraphs (b) and (c) of this section and to the provisions of § 31.3302(c)-1, the taxpayer may credit against the tax for any taxable year the total amount of contributions paid by him into an unemployment fund maintained during such year under a State law which has been found by the Secretary of Labor to contain the provisions specified in section 3304(a); *Provided, however,* That no credit may be taken for contributions under a State law if such State has not been duly certified for the calendar year to the Secretary of the Treasury by the Secretary of Labor. The contributions may be credited against the tax whether or not they are paid with respect to employment as defined in section 3306(c). For provisions relating to additional credit against the tax, see § 31.3302(b)-1.

(b) *Limitation on the taxable year with respect to which contributions are allowable.* In order to be allowable as credit against the tax for any taxable year, the contributions must have been paid with respect to such year.

Example 1. Under the unemployment compensation law of State X, employer M is required to report in his contribution return for the quarter ending December 31, 1955, all remuneration payable for services rendered in such quarter. A portion of such remuneration is not paid to his employees until February 1, 1956. On January 20, 1956, M pays to the State the total amount of contributions due with respect to all remuneration so required to be reported. Such contributions, including those with respect to the remuneration paid on February 1, 1956, may be included in computing the credit against the tax for the calendar year 1955. This is true even though the remuneration paid on February 1, 1956 (if it constitutes "wages") is required to be reported in the Federal return for 1956 and not in the Federal return for 1955.

Example 2. Under the unemployment compensation law of State Y, employer N is required to include in his contribution return for the quarter ending December 31, 1955, certain remuneration paid on December 30, to 1955, to an employee for services to be rendered after December 31. On January 20, 1956, N pays to the State the total amount of contributions due with respect to all remuneration required to be reported on the contribution return. Such contributions, including those with respect to the remuneration paid on December 30, 1955, may be included in computing the credit against the tax for the calendar year 1955.

(c) *Limitation on amount of credit allowable based on time when contributions are paid—(1) In general.* The amount of credit allowable for contributions paid into a State unemployment fund depends in part on the time of payment of such contributions. Although contributions paid at any time may be credited against the tax (subject to the limitations referred to in paragraphs (c)(2) and (3) of this section), no refund or credit of the tax based on credit for contributions paid will be allowed unless the contributions are paid prior to the expiration of the period of limitations applicable to refund or credit of the tax. For general provisions relating to the limitation period and to refunds, credits and abatements of the tax, see respectively §§ 301.6511(a)-1, 301.6402-2 and 301.6404-1 of this chapter (Regulations on Procedure and Administration).

(2) *Amount of credit allowable when contributions are paid on or before last day for filing return.* Contributions paid into a State unemployment fund on or

before the last day upon which the Federal return for the taxable year is required to be filed may be credited against the tax in an amount equal to such contributions, but not, however, to exceed the total credits, determined pursuant to § 31.3302(c)-1. For provisions relating to the time for filing the return, see § 31.6071(a)-1 in Subpart G of this part.

(3) *Amount of credit allowable when contributions are paid after last day for filing return.* Contributions paid into a State unemployment fund after the last day upon which the Federal return for the taxable year is required to be filed may be credited against the tax in an amount not to exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid into a State unemployment fund on or before such last day. However, see paragraph (c)(4) of this section relating to the payment of contributions to the wrong State. For general provisions relating to refunds, credits, and abatements of the tax, see §§ 301.6402-2 and 301.6404-1 of this chapter (Regulations on Procedure and Administration).

Example 1. The Federal return of the M Company for the calendar year 1961 discloses total wages of \$400,000. The Federal tax, imposed at the rate of 3.1 percent, is \$12,400. The company is liable for total State contributions of \$8,000 for 1961. The due date of the Federal return is January 31, 1962, no extension of time for filing the return having been granted. The contributions are not paid until February 1, 1962. If the contributions had been paid on or before January 31, 1962, the entire amount of \$8,000 could have been credited against the tax. (Credits could not exceed 2.7 percent of the wages, or \$10,800. See § 31.3302(c)-1.) Since the contributions were paid after January 31, 1962, the M Company is entitled to a credit of 90 percent of the amount which would have been allowable as credit had the contributions been paid on time (90 percent of \$8,000, or \$7,200), the net liability for Federal tax being \$5,200 (\$12,400 minus \$7,200).

Example 2. The facts are the same as in example 1, except that the M Company is liable for and pays total State contributions of \$12,000, instead of \$8,000. If the contributions had been paid on or before January 31, 1962, the amount allowable as credit would have been \$10,800 (2.7 percent of wages of \$400,000). Since the contributions were paid after January 31, 1962, the M Company is entitled to a credit of 90 percent of \$10,800, or \$9,720, the

net liability for Federal tax being \$2,680 (\$12,400 minus \$9,720).

Example 3. The Federal return of the R Company for the calendar year 1961 discloses a total tax of \$3,100. The company is liable for total State contributions of \$2,700 for such year. The due date of the Federal return is January 31, 1962, no extension of time for filing the return having been granted. The R Company pays \$1,700 of the total State contributions on or before such date, and the remaining \$1,000 on February 1, 1962. If the \$1,000 had been paid on or before January 31, 1962, that amount could have been credited against the tax (such amount plus the \$1,700 paid on or before January 31, 1962, not exceeding the aggregate credit allowable). Since the \$1,000 was paid after January 31, 1962, the R Company is entitled to a credit of 90 percent of this amount or \$900, plus the credit of \$1,700 allowable for the contributions paid on or before January 31, 1962. The net liability for Federal tax is thus \$500 (\$3,100 minus \$2,600).

(4) *Amount of credit allowable when contributions are paid to wrong State.* Contributions for the taxable year paid into a State unemployment fund which are required under the unemployment compensation law of that State, but which are paid with respect to remuneration on the basis of which the taxpayer had, prior to such payment, erroneously paid an amount as contributions under another unemployment compensation law, shall be deemed for purposes of the credit to have been paid at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions for such taxable year with respect to services subject to such other law, the payment into the proper fund shall be deemed for purposes of credit to have been made on the date the Federal return for such year was actually filed by the taxpayer under § 31.6011(a)-3.

Example. Employee N, whose Federal return for the calendar year 1961 discloses a total tax of \$3,100, employs individuals in State X and State Y during the calendar year 1961. N assumes in good faith that the services of his employees are covered by the unemployment compensation law of State Y, and pays as contributions to State Y the amount of \$2,700 based upon the remuneration of the employees. All of the services were in fact covered by the unemployment compensation law of State X, and none by the law of State Y. The payment to State Y was made on January 31, 1962. When the error was discovered thereafter, N paid to

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State X contributions in the amount of \$2,700 based upon such remuneration. Since the contributions were paid to State Y on January 31, 1962, the contributions to State X are, for purposes of the credit, deemed to have been paid on such date. N is entitled to a credit of \$2,700 against the Federal tax of \$3,100, the net liability for Federal tax being \$400 (\$3,100 minus \$2,700).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6658, 28 FR 6632, June 27, 1963]

§ 31.3302(a)-2 Refund of State contributions.

If, subsequent to the filing of the return, a refund is made by a State to the taxpayer of any part of his contribution credited against the tax, the taxpayer is required to advise the district director of the date and amount of such refund and the reason therefor, and to pay the tax, if any, due as a result of such refund, together with interest from the date when the tax was due.

§ 31.3302(a)-3 Proof of credit under section 3302(a).

Credit against the tax for any calendar year for contributions paid into State unemployment funds shall not be allowed unless there is submitted to the district director:

(a) A certificate of the proper officer of each State (the laws of which required the contributions to be paid) showing, for the taxpayer:

(1) The total amount of contributions required to be paid under the State law with respect to such calendar year (exclusive of penalties and interest) which was actually paid on or before the date the Federal return is required to be filed; and

(2) The amounts and dates of such required payments (exclusive of penalties and interest) actually paid after the date the Federal return is required to be filed.

(b) A statement by the taxpayer that no part of any payment made by him into a State unemployment fund for such calendar year, which is claimed as a credit against the tax, was deducted or is to be deducted from the remuneration of individuals in his employ. Such statement shall contain or be verified by a written declaration that it is made under the penalties of perjury.

(c) Such other or additional proof as the Commissioner or the district director may deem necessary to establish the right to the credit provided for under section 3302(a).

§ 31.3302(b)-1 Additional credit against tax.

(a) *In general.* In addition to the credit against the tax allowable for contributions actually paid to State unemployment funds (see § 31.3302(a)-1), the taxpayer may be entitled to a credit under section 3302(b). This additional credit is allowable to the taxpayer with respect to the amount of contributions which he is relieved from paying to an unemployment fund under the provisions of a State law which have been certified for the taxable year as provided in section 3303. Generally, an additional credit is available to an employer, if under the provisions of a State law which have been so certified he is permitted to pay contributions to such State for the taxable year, or portion thereof, at a rate which is both lower than the highest rate applied under such law in such year and lower than 2.7 percent. No additional credit is allowable except with respect to a State law certified by the Secretary of Labor for the taxable year as provided in section 3303 (or with respect to any provisions thereof so certified).

(b) *Method of computing amount of additional credit allowable with respect to a State law—(1) Certification of a State law as a whole.* In ascertaining the additional credit for any taxable year with respect to a particular State law which the Secretary of Labor certifies as a whole to the Secretary of the Treasury in accordance with the provisions of section 3303, the taxpayer must first compute the following amounts:

(i) The amount of contributions (whether or not with respect to employment as defined in section 3306(c)) which the taxpayer would have been required to pay under the State law for such year if throughout the year he had been subject to the highest rate applied under such law in such year, or to a rate of 2.7 percent, whichever rate is lower.

(ii) The amount of contributions (whether or not with respect to employment as defined in section 3306 (c))